



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: The Law Offices of George E. Hill

File: B-272168

Date: September 4, 1996

James P. Ray, Esq., Robinson & Cole, for the protester.
Hughes Griffis, Esq., Waller, Smith & Palmer, an intervenor.
Richard E. Weston, Department of Housing and Urban Development, for the agency.
Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency properly awarded real estate property closing services contract to law firm offeror where offeror did not intentionally misrepresent or omit information about its prior representation of major real estate lenders in its proposal, the solicitation did not require the listing of these clients, and where the record shows that the offeror's listing of these alleged client conflicts would not have altered the agency's award decision.

DECISION

The Law Offices of George E. Hill protests the award of a contract to Waller, Smith & Palmer, a law firm, under request for proposals (RFP) No. H01R96000100000, issued by the Department of Housing and Urban Development (HUD) as a small business set-aside to provide real estate property closing services in connection with the sale of HUD-acquired defaulted family properties in Connecticut. Hill alleges that Waller has had lawyer-client relationships with several major Federal Housing Administration (FHA) lenders in Connecticut that Waller did not disclose in its proposal and that present "a substantial organizational conflict [which prevents the firm from rendering objective advice to HUD] and that should lead to the firm's disqualification."

We deny the protest.

The RFP, issued February 20, 1996, contemplated multiple awards of indefinite quantity contracts for a base period and 2 option years with services secured by

issuance of task orders.¹ The RFP required offerors to propose fixed-unit prices per sale closed. The RFP stated that the government would make award to the responsible offeror submitting the conforming, low-priced technically acceptable offer. The RFP contained the following technical evaluation criteria which offerors had to meet to be considered technically acceptable: (1) general experience and qualifications of the offeror; (2) ability to establish offices reasonably located in the service area and with adequate resources; and (3) a management plan that reflects the offeror's ability to perform requirements, including the management of staff and subcontractors and the "management of cases in which a conflict of interest [has] been identified," as well as a quality control plan. The RFP stated that the government would evaluate prices by multiplying the unit prices for each performance period by an estimated minimum number of stated closings and that the price for each period would be added together to obtain a total evaluated price.

The RFP included in Section L the provision at HUD Acquisition Regulation (HUDAR) L.1 (1995), "Organizational Conflicts of Interest Notification (FEB 1987)," which provided, in relevant part, as follows:

"(a) It is the [HUD] policy to avoid situations which place an offeror in a position where its judgment may be biased because of any past, present, or currently planned interest, financial or otherwise, that the offeror may have which relates to the work to be performed pursuant to this solicitation or where the offeror's performance of such work may provide it with an unfair competitive advantage.

"(b) Offerors shall provide a statement which describes in a concise manner all relevant facts concerning any past, present or currently planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed . . . [bearing on whether the offeror can render objective advice and whether it would receive an unfair competitive advantage].

"(c) In the absence of any relevant interests referred to above, the offeror shall complete the certification at [HUDAR § 2452.209-71], Organizational Conflicts of Interest Certification.

¹The multiple award provision was required because the agency anticipated awarding contracts for these services in five separate New England states. Only the award of the Connecticut contract is at issue here.

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"(f) If the [c]ontracting [o]fficer determines that a potential conflict exists, the selected offeror shall not receive an award unless the conflict can be avoided or otherwise resolved through the inclusion of a special contract clause or other appropriate means. . . ."

The agency states that because it determined that typically all firms that would submit proposals under this solicitation were likely to have contractual relations with FHA lenders and other mortgage companies, it included the following contract clause to neutralize and mitigate such possible conflicts of interest:

"H.10 Conflict of Interest

"The Contractor shall not be permitted to directly perform work on any case for which there may be a conflict of interest. A conflict of interest may arise if the Contractor performed work or was involved in the legal work related to the foreclosure action which resulted in HUD's acquisition of a property which may be assigned to the Contractor under this contract for either review of title evidence received by HUD upon its acquisition of the property or an examination of the title beginning with the date of HUD's acquisition. The fact that a conflict of interest may occur does not relieve the contractor from the responsibility of ensuring that the services requested are performed in accordance with the contract requirements; the Contractor shall have an acceptable method in place of identifying potential conflicts of interest and ensuring that the work they are precluded from accomplishing themselves is accomplished as required."

Twelve proposals were received by the closing date of March 21.² The proposals of Waller and Hill were found to be technically acceptable. Waller's total evaluated price was \$520,000; Hill's evaluated price was \$712,200. The agency awarded the contract to Waller. This protest followed.³

²We limit our discussion to the proposals of Hill and Waller.

³In its comments on the agency report, filed more than 14 days after its receipt of that report, the protester complains that the contracting officer failed to provide pre-award notice of the intended awardee as generally required in small business set-asides. This matter is untimely. See 4 C.F.R. § 21.2(a)(2) (1996).

The protester simply argues that Waller has represented numerous major mortgage lenders in the past and has "substantial relationships with many of the top mortgage lenders in the State." The protester faults Waller for not listing each lender in its proposal and thereby fully disclosing its prior legal representation of major lending companies. The protester argues that this "nondisclosure" by Waller requires that Waller be disqualified from receiving the award.

The agency points out that Waller submitted a detailed conflict avoidance plan in its proposal which stated in part:

"Each time a file is opened, a conflict check is run by computer in order to avoid any conflicting representation. . . . Should the routine conflict check reveal that the purchaser of a parcel owned by HUD is a former or present client of [Waller], a letter shall be forwarded to said client indicating that with respect to this transaction [Waller] represents the Seller (HUD) and therefore cannot represent his interests at closing. In some cases, such a present or former client will be asked at closing to sign a document acknowledging that [Waller] did not represent their interest."

The agency stands by its selection of Waller despite the contentions of the protester.

Generally, where an offeror has made an intentional misrepresentation that materially influenced the agency's consideration of its proposal, the proposal should be disqualified and a contract award based upon the proposal canceled. Gold Appraisal Co., B-259201, Mar. 15, 1995, 95-1 CPD ¶ 144. However, even where our Office determines that a misrepresentation was intentional, we will not find an offeror ineligible for award where the correct representation reasonably would not alter the agency's award decision and the misrepresentation was not made in bad faith. See Gold Appraisal Co., *supra*.

This protest requesting the disqualification of Waller is without merit for the following reasons. First, there is no evidence of any intentional misrepresentation, bad faith, or nondisclosure by Waller concerning its business relationships or prior clients. We do not read the RFP to require the Waller law firm and other offerors to list all previous major lenders for which the firm or firms had provided legal services. In fact, as HUD reasonably concluded, the Waller proposal presented a comprehensive and effective plan for the avoidance of any conflicts during contract performance. Second, the agency was fully made aware (at the latest during the pendency of this protest) of the potential for any conflicts by Waller and has affirmed its decision that Waller's plan to avoid any conflicts was acceptable and to select Waller for award. While the protester argues that the awardee's

representation of FHA mortgage lenders and the awardee's role as a HUD closing agent creates an impermissible conflict of interest, as stated above, HUD anticipated that offerors would likely have relationships with mortgage companies and other lenders and included H.10 to provide for neutralizing/mitigating such possible conflicts of interest. Here, the awardee's proposal listed the names of the FHA mortgage lenders which the firm has represented in the closing process and its proposed conflict avoidance plan states that it will identify potential conflicts, limit its representation to HUD as HUD's closing agent and so advise the former client of its position so that the former client can obtain its own independent counsel for the closing. We have no basis to question HUD's determination that this arrangement will avoid or mitigate any potential conflict of interest. See Gold Appraisal Co., supra. Moreover, we simply note that the Waller law firm can recuse itself where a serious conflict is present to avoid any contract performance problems.

The protest is denied.⁴

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⁴The protester also alleges that a HUD employee had been previously represented by Waller at a closing. The record shows that this employee had no part in the procurement. The protester makes similar allegations about another employee of HUD for the purpose of permitting HUD to take "measures [to avoid] any future problems." We think this allegation concerns a matter of contract administration and is not for our review. See 4 C.F.R. § 21.5(a).